

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 733 OF 2003

The State of Maharashtra,
through Police Station Officer,
Bhadgaon Police Station,
District Jalgaon

APPELLANT

VERSUS

1. Vasant Vikram Bhill,
Age : 27 years
2. Nana Vikram Bhill,
Age : 29 years
3. Vikram Manji Bhill,
Age : 62 years
4. Sakubai Vikram Bhill,
Age : 59 years,

All r/o Walwandi, Taluka
Bhadgaon, District Jalgaon

RESPONDENTS

Mr. S.R. Palnitkar, A.P.P. for the appellant/State
Mr. G.B. Rajale, Advocate for the respondents

CORAM : M.T. JOSHI, J.
DATE : 02/07/2015

ORAL ORDER :

1. Heard both sides.
2. Aggrieved by the acquittal of the present

respondents from the offences punishable under section 323, 325 and 504 read with section 34 of the I.P. Code, recorded by the learned Judicial Magistrate First Class, Bhadgaon vide judgement and order dated 8th August, 2003, passed in Regular Criminal Case No. 52/1996, the present appeal is preferred by the State.

3. The prosecution case, in short, is as under :-

. That, PW2 Sukdev owns land at village Walwadi, Taluka Bhadgaon. The respondents also held land adjoining to the said land and there is a common bandh between the two lands. On 14th June, 1996, at about 4 p.m., the injured complainant went towards the common bandh and saw that it was destroyed. All the present respondents were seen in the field. The injured complainant, therefore, questioned the respondents as to why they had broken the bandh. The respondents started abusing him and questioned as to whether the bandh belongs only to the injured complainant. In the said incident, respondent No. 1 Vasant gave a blow of a rod of spade on the right wrist of injured complainant. He fell down. At that time, a cut portion of a tree hit

head of complainant while falling and he sustained minor injury to the head. During the same incident, respondent No. 2 Nana and respondent No. 3 Vikram assaulted him with slaps and fist blows. Respondent No. 4 Sakhubai abused him. PW1 Lalchand and one Shivaji Onkar Patil had witnessed the incident and intervened in the same.

. The complaint (Exhibit-34) was filed on the same day with the police station. It was registered as a non-cognizable case. It is the prosecution case that when on 17th June, 1996, the injured complainant presented the injury certificate to the police station, the crime came to be registered for the offences, as detailed supra.

4. The investigation was carried by PW6 Shantaram Bhalerao. The weapon of the offence was seized from respondent No. 1 Vasant. The statements of the eye witnesses were recorded and after carrying other usual investigation, the chargesheet came to be filed.

5. Before the learned Judicial Magistrate First Class, in all six witnesses were examined. PW1 Lalchand

is referred in the FIR as an eye witness. PW2 Sukdev is the injured complainant. PW3 Nimba was examined as panch witness. PW4 Indubai is the wife of the complainant, who, according to the prosecution, was the eye witness. PW5 Dr. Madhukar Sonawane had examined the injured complainant while PW6 Shantaram Bhalerao is the Investigating Officer.

6. The learned Judicial Magistrate First Class, however, found the evidence as unbelievable. Therefore, acquittal of all the present respondents came to be recorded.

7. Mr. S.R. Palnitkar, learned A.P.P. submits that the testimony of the injured is corroborated by the medical evidence. Besides, there are eye witnesses to the incident, as detailed supra. The learned Judicial Magistrate First Class, according to him, however, has not taken into consideration all these facts and banking on the minor contradiction or omission, between the statements of the witnesses and also qua the FIR, acquitted the respondents. He, therefore, submitted that the appeal be allowed and the respondents be

convicted.

8. On the other hand, Mr. G.B. Rajale, learned counsel for the respondents, submitted that the prosecution case is belied by the material on record itself, as has been appreciated by the learned Judicial Magistrate First Class. He submits that the reading of the impugned judgement would show that a reasonable and probable view of the material on record is taken by the learned Judicial Magistrate First Class. Hence, in the present appeal against acquittal, according to him, no interference is warranted.

9. On the basis of this material on record and the submissions advanced on behalf of both sides, the following points arise for my determination :-

(I) Whether the prosecution has proved that on 14th June, 1996 at about 4 p.m., all the present respondents, in furtherance of their common intention, in a field at village Walwadi, Taluka Bhadgaon, have voluntarily caused grievous hurt to the complainant, more

particularly the respondent No. 1 has caused the hurt to the complainant by using dangerous weapon spade ?

(II) Whether the prosecution has proved that on the given date, time and place, all the present respondents, in furtherance of their common intention, voluntarily caused simple hurt to the complainant ?

(III) Whether the prosecution has proved that on the given date, time and place, all the present respondents have intentionally insulted the complainant thereby giving provocation to him, intending that the provocation may cause the complainant to break the public peace ?

(IV) What order ?

My findings to the above points No. (I) to (III) are in negative and hence, the appeal is dismissed for the reasons to follow :-

R E A S O N S

10. It is the prosecution case that during the verbal exchange of words, respondent No.1 Vasant hit the complainant on his wrist by the spade. The injury certificate issued by PW5 Dr. Madhukar Sonawane also shows that there was swelling on the dorsal aspect of the hand. Besides, the injury to the head, as detailed by the complainant, was also found. The learned Judicial Magistrate First Class has discussed as to whether a fracture was there or as to whether, without any X-ray, such opinion could have been given by the Medical Officer. It should, however, be noted that the respondents were tried for the offence punishable under section 325 of the I.P. Code i.e. for causing hurt by a dangerous weapon. Be that as it may. The prosecution story would reveal that the independent eye witness PW1 Lalchand was one field away from the field of the complainant – injured.

11. PW4 Indubai has deposed that when her husband

was assaulted by the respondents and more particularly respondent No. 1 Vasant hit with the spade, she shouted and on her shouting, PW1 Lalchand and another witness Shivaji came there. The incident is of giving a single blow of spade due to which, according to the prosecution, the complainant injured has fallen on the ground. A person, who is one field away from the spot of occurrence, therefore, would not have witnessed the incident upon reaching to the spot, upon hearing shouts of PW4 Indubai. The reasoning forwarded by the learned Judicial Magistrate First Class in this regard, therefore, cannot be faulted with.

12. While it is the prosecution case that this witness i.e. PW1 Lalchand as well as witness Shivaji Onkar Patil, had intervened in the quarrel, PW1 Lalchand did not depose about intervention by said Shivaji. Further, while it is the prosecution case that the rod of the spade was used, the complainant deposed that the iron part of the spade was used in hitting him. As regards the injury caused to the head of the complainant due to the falling on the ground, again the witnesses, including injured complainant, did not depose anything

on this point. The learned Judicial Magistrate First Class has considered all these facts and extended benefit of doubt to the present respondents.

13. Since reasonable and probable view of the material on record is taken by the learned Judicial Magistrate First Class, in the present appeal against acquittal, no interference is warranted. Hence, the following order :-

14. The appeal is hereby dismissed. The bail bonds, if any of the respondents, shall stand cancelled.

[M.T. JOSHI]
JUDGE

npj/criapl733-2003

